even in a more fully developed locality, such a taking would be so clearly unwarranted and arbitrary as to be declared unconstitutional. The suggestion of the court in the principal case would seem, therefore, to be based on sound reason and a liberal conception of the legislative power.

THE ASSIGNMENT OF A CLAIM ALREADY PARTIALLY COLLECTED BY THE ASSIGNOR'S AGENT. — Some interesting questions are raised by a recent decision in the New York Court of Appeals. *Curtis* v. *Albee*, 167 N. Y. 360. The plaintiff assigned to the defendant a claim against an insolvent as "a claim for an unpaid balance of $2000." Unknown to both parties, at the time of the assignment about $800 had been paid upon the claim by the insolvent's assignee to the attorney of the plaintiff. The defendant afterwards learning of this payment induced the attorney to turn over to him the money thus collected, and the plaintiff brought an action for a reformation of the contract of assignment and other equitable relief. In denying that the plaintiff was entitled to any relief against the defendant, the court took the position that the attorney was still indebted to the plaintiff, and the defendant apparently indebted to the attorney, but that the defendant owed nothing to the plaintiff directly.

The *dictum* that the transfer of a claim does not carry with it payments made without the knowledge of the assignor before the transfer is clearly sound. A contrary result, however, was effected by the construction of an instrument of assignment in an essentially similar case. *Klock* v. *Buell*, 56 Barb. (N. Y.) 398. Assuming that the assignment passed to the defendant no interest in the money wrongfully paid over to him by the attorney of the plaintiff, the decision that the plaintiff cannot recover it from him directly seems to be undesirably technical. The money, when paid to the attorney, was held by him in trust for the plaintiff. *Frost* v. *M'Carger*, 14 How. Pr. (N. Y.) 131. If he kept the money apart from his own funds until he paid it to the defendant, it is the simple case of trust funds paid to a volunteer with notice. If he wrongfully mingled the amount with his own funds, he stood in the position of a debtor to the plaintiff. *Nevius* v. *Disborough*, 13 N. J. L. 343. But upon his designating certain money as that belonging in equity to his principal there seems to be no good reason why the latter should not be permitted to claim it as trust funds, and follow it into the hands of a volunteer. Such in effect was the decision in *Matter of Le Blanc*, 75 N. Y. 598.

Although the decision in the principal case in denying the assignor a direct recovery from the assignee cannot be supported upon the reasoning advanced, the result seems equitable upon grounds apparently not presented in argument. The assignor of a claim impliedly warrants that it is an existing and valid claim for the amount specified. *Gilchrist* v. *Hilliard*, 53 Vt. 592. The measure of damages for the breach of this warranty is the difference in value of the claim as actually transferred and as represented. *Bennett* v. *Buchan*, 61 N. Y. 222. In the principal case the value of the plaintiff's claim against his debtor became fixed upon the latter's insolvency. The difference between what the defendant received upon the claim as actually transferred, and what he would have received upon the claim as described, is measured by the sum paid to the plaintiff's attorney before the assignment. A recovery of that amount by the plaintiff in this action would be followed by a recovery

of the same amount by the defendant in an action upon the implied warranty. Equity to avoid circuity of action should leave the parties in their present position. *Dodd* v. *Wilson*, 4 Del. Ch. 399. It will be remarked that the same conclusion follows in a case where the debtor was solvent at the date of the assignment, but in a case where his insolvency intervened between the payment and the assignment a different result would be reached.

CONSPIRACY TO INJURE IN BUSINESS. — Few questions have given rise to more litigation than those concerning combinations of capital or labor. A recent case before the Supreme Court of Wisconsin squarely presents the issue: Can acts, which are lawful for an individual, become unlawful or actionable, when done by a confederacy? *Hawarden* v. *Youghiogheny, etc., Co.*, 87 N. W. Rep. 472 (Wis.). Certain wholesale dealers in substantial control of the local coal supply and certain retail dealers agreed to trade exclusively with one another for the purpose, among others, of forcing out of the trade those retailers not in the combination. In pursuance of this agreement the defendant conspirators refused to sell to the plaintiff, whose business was thereby destroyed. On demurrer to the declaration the court decided there was a cause of action at common law.

There can be no doubt that each defendant singly had the legal right to refuse to sell to the plaintiff. Such discrimination could be exercised by an individual, although he had a practical monopoly. See *Brewster* v. *Miller*, 101 Ky. 368. The motive also is immaterial, for the right to discriminate is regarded as an absolute right, except in the cases of public servants such as carriers, telegraph companies, etc., under which category coal dealers do not fall. *Opinions of the Justices*, 155 Mass. 598. If an act is not tortious, when done by one it is said to follow logically that it cannot be tortious, when done by several, and on this reasoning, the decisions *contra* to the principal case are based. *Hunt* v. *Simonds*, 19 Mo. 583; *Bohn Mfg. Co.* v. *Hollis*, 54 Minn. 223 (*semble*).

But is it true that the concerted refusal to deal with a man is precisely the same act as the refusal of an independent individual? Andrews, J., in *Leathem* v. *Craig* declares, "Their commission [*i. e.* acts] by the concerted action of a number materially alters their character in this respect at least, that they thereby become more formidable, more oppressive, harder to resist, and therefore more generally dangerous; and this independent of motive." *Leathem* v. *Craig*, [1899] L. R. Ir. 2 Q. B. D. 667, 676; s. c. *Quinn* v. *Leathem*, [1901] A. C. 495. This distinction seems valid. Nor is the force of it destroyed by the fact that in some one particular instance an individual may have more power to injure than an associated number. It is not merely the addition of combination, but the alteration in the character of the acts done, which explains the liability of the defendants. Moreover, their agreement of necessity involves the inducement of each party to it by the others not to deal with the plaintiff. The right to influence another to the damage of a third person is, under the modern conception of the law of torts, unquestionably a qualified right the exercise of which, if exerted to injure a third person, demands justification. *Plant* v. *Woods*, 176 Mass. 492. See 8 HARV. L. REV. 1. Though the cases are in undoubted conflict, there is authority as well as reason to qualify the general proposition, that what an indi-